

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States District Court
Southern District of Texas
FILED

APR 27 2018

KEITH M. COLE, ET AL,
Plaintiff,

David J. Bradley, Clerk of Court

VS.

CIVIL ACTION NO. 4:14-CV-1698

BRYAN COLLIER, ET AL,
Defendants.

PLAINTIFF'S PRO SE ADVISORY TO THE COURTS

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Keith M. Cole #728748 (Class Member Representative)
to file this Advisory to the Court.

Plaintiff is compelled to file this Advisory because time is of
the essence.

There are issues that need to be addressed before a final settlement
is signed by this Court.

Plaintiff will show the following:

**OVERHEAD AND DAYROOM FANS ARE BEING USED TO PUNISH
AND HARASS OFFENDERS**

Records will clearly indicate, that since being transferred back to the Wallace Pack unit in March 2018, the average temperature outside at night has been in the low and mid fifties.

Prior to the instalation of the new air conditition system in our living areas, T.D.C.J. Officials still utilized four industrial barrel fans to circulate the air throughout the Dorms.

However, once that the air condition was up and running, Unit Warden Robert Herrera **GAVE A DIRECT ORDER TO ALL SHIFT SUPERVISORS "UNDER NO CIRCUMSTANCES ARE THE BARREL FANS TO BE TURNED OFF REGARDLESS OF THE OUTSIDE TEMPERATURE"**.

There have been nights that the temperature has dropped into the forties and the barrel fans were never turned off.

Having air condition is a blessing and by itself would be endurable even with the outside temperature being in the forties but compounded with these barrel fans, the windchill feels like the thirties.

Offenders have raised numerous complaints all to no avail.

One of the Older Offenders on my Dorm was so cold and desperate, that he disalbed the two dayroom fans and as a result we all were placed on lockdown for 24 hours.

There is simply no justification for these fans to be left on during the nights where the temperature is in the fifties.

The standard responce for T.D.C.J. security is all the same **"YOU WANTED AIR CONDITION, SO THIS IS WHAT YOU GET"**.

UNPAID AND UNRESOLVED PROPERTY LOSS AND DAMAGED CLAIMS

Records will show, that T.D.C.J. Officials assured this Court, that they would resolve any and all property claims which resulted from the transfer of Offenders to other units under a Federal Emergency Injunction.

To date, many of these claims have not been resolved.

Offenders were compensated for some of their items and other items were disregarded.

Offenders were told that they would be compensated for these items in dispute at a latter date.

However, when Offenders inquired about these items, they were told that their claim had been paid in full.

Items such as personal pictures, legal work, court records and trial records were never included in any compensation package.

Offenders were paid with items that they did not want or could use.

**OFFENDERS WHO GO ON MEDICAL CHAINS ARE BEING HOUSED WITHOUT
THE REQUIRED NECESSITY ITEMS**

It is well established, that any Class Member who is heat sensitive must be housed in an air conditioned cells while on any medical chain.

T.D.C.J. has accommodated these Offenders by placing them in the Super max facility on the Estelle unit.

For several months, Offenders have complained to both T.D.C.J. Officials and to the Lawyers representing the Class members of a **"SYSTEMIC PROBLEM"** in regards to providing Offenders with mattresses, sheets, blankets, toilet paper, soap, towels, boxers, a change of clean cloths and warm food.

Offenders who are assigned to an Agg. Seg, cell usually bring their own mattress, sheets, blankets, toilet paper, cups and spoons.

However, when an Offender is assigned to a Agg. Seg cell directly from a Medical Chain, there are no necessity items available.

Agg. Seg. housing throughout T.D.C.J. do not have the current facilities to provide Offenders with the necessity items needed by Offenders on a Medical Chain and the Estelle unit is no different.

WELLNESS CHECKS USED AS A TOOL TO ABUSE

Since returning to the Pack unit in March of 2018, T.D.C.J. Officials have conducted wellness checks on all Offenders every time they conduct security counts.

These counttimes are done approximately ever two housr 24 hours a day. These wellness checks are very problematic especially during the night. Offenders are not allotted their 5 or 6 hours of uninterrupted sleep.

These wellness checks are just one example of how T.D.C.J. Officials have devised a low visibility way to punish and harass Offenders who are involved in this civil action.

**ON A PERSONAL NOTE
I HAVE RECEIVED DISCIPLINARY CASES THAT WERE A CLEAR CUT
VIOLATION OF MY CONSTITUTIONAL RIGHT TO FREE SPEECH AND EXPRESSION
AND MY RIGHTS TO DUE PROCESS**

First, I do understand, that this Court is not required to review or respond to any request I may have in regards to disciplinary cases that I have received while under a Federal Injunction.

However, I pray that once you see how blatantly perverse these cases are, you would make an exception and review them.

DISCIPLINARY CASE NUMBER 20180039907

On 10-10-2017 while in the Leblanc unit Law Library, I was ordered by Law Library Supervisor V. MAHFOOD not to put the title Mr. in front of my name when I sign in on the Law Library log. **SEE EXHIBIT-1**

I informed Ms. V. Mahfood, that I have been signing my name Mr. for several years and I would not stop doing so.

I also informed her, that there is no policy, procedure, or guidelines that state, that I can't sign my name with the title Mr.

Signing my name Mr. is in no way abusive, derogatory, degrading or profane. Nor does it hinder or prevent Security personnel from being able to properly identify me.

No way does it disrupt the daily operation of the prison unit or Law Library.

As a matter of clearly established law, when a prison regulation impinges on an Offender's first amendment right, the regulation is valid only if it is reasonable related to a legitimate penological interest.

A regulation cannot be sustained where the logical connection between the regulation and the asserted goal is so remote as to render the regulation arbitrary and irrational.

Plaintiff would like to ask this Court to please review Law Library Log sign in rules as **EXHIBIT-2 ATTACHED HEREIN.**

Clearly nowhere in this policy does it forbid and Offender from signing Mr.in front of his name.

Recently the U.S. Supreme Court just ruled that ordinary people should have fair notice of the conduct a statue proscribes.

This was reffered to as the **VOID-FOR-VAGUENESS DOCTRINE.**

To add insult to injury, this unconstitutional application of this T.D.C.J. policy resulted in me being found guilty of the offence as charged.

DISCIPLINARY CASE NUMBER 20180071962

On 11-7-2017 Plaintiff was given a disciplinary case for allegedly typing a personal letter to his 91 year old Mother while in the Law Library.

Records will show, that when Plaintiff was transferred to the Leblanc unit, there were no electrical outlets in his living area execpt for the use of fans in the dayroom and dorm.

Upon arrival the Unit Major posted a notice throughout the livingareas, that typewriters could be used in the Law Library.

PLEASE NOTE:NO WHERE IN THIS NOTICE DOES IT STATE THAT Offenders could ONLY DO LEGAL WORK ON THEIR TYPEWRITERS.

ALSONNO WHERE DOES THIS NOTICE GIVE ANY WARNING, THAT IF AN OFFENDER DID USE HIS TYPEWRITTER FOR PERSONAL USE WHILE IN THE LAW LIBRARY THAT THEY WOULD RECEIVE A DISCIPLINARY CASE FOR DOING SO.

On 11-8-2017 while in my living area, unplugged a fan that was not in use and plugged up my typewriter and typed the letter in question to my Mother.

That night I put it in the mailbox.

The following day, I was called to the Mailroom by Mailroom Supervisor M. Cervantez.

Ms Cervantez handed me my letter to my Mother and told me that I could not mail out a typed letter on the Leblanc unit.

I asked her to please show me a mailroom rule that states I could not mail out a typed letter.

She told me that it was a unit rule.

I then told her that I refuse to accept my letter back and I wanted her to mail it out. She refused and told me to take my letter and leave the window.

I told her that I did not agree with her decision and I wanted to appeal her decision.

She told me that if I appealed her decision and went through the process, she was going to write me a disciplinary case.

I told her to write until her fingers fall off.

Seven days later I was informed that I had a **MAJOR DISCIPLINARY CASE** for writing a letter to my Mother in the Law Library.

PLEASE NOTE: THIS IS A MINOR RULES INFRACTION THAT WAS ENHANCED TO A MAJOR CASE BECAUSE OF THE OTHER CASE I GOT FOR SIGNING MY NAME Mr. SEE EXHIBIT-3

First of all I **DID NOT TYPE THE LETTER IN QUESTION IN THE LAW LIBRARY** BUT SHE HAD TO FIND A WAY TO SUBSTANTIATE WRITING ME A CASE.

For several months, I begged my Legal Team to please get a copy of the recording of my disciplinary hearing.

This recording will clearly show, that there is absolutely no proof or evidence of my guilt.

ALL THAT I ASK, IS FOR THIS COURT TO PLEASE REQUEST A COPY OF THIS RECORDING AND HEAR FOR YOURSELF A CLASSIC T.D.C.J. KANGAROO COURT.

As a matter of clearly established law there must be some evidence to support the charge **»SEE TEAGUE VS. QUARTERMAN 482 F3d.769,780 (5th.Cir 2007)**

The only reason that these case have affected me so much is that they were used to remove me from the Craft Shop.

I have invested many a dollar on tool and materials.

In most cases disciplinary cases the sanctions may not be severe enough to amount to a deprivation of a Liberty interest but due process may be required because the Offender has been deprived of his property. **SEE JEFFERIES VS. TENNESSEE DEPT OF CORRECTIONS 108 S.W. 3d. 862,872,73.**

When I was afforded the opportunity to possess property in the Craft Shop, I enjoy a protected interest in that property that cannot be infringed without due process. **SEE SANDIN VS. CONNER 515 U.S. 472 115 S,CT. 2293.**

In addition: I received the maximum punishment.

I was given 45 days rec and commissary restrictions and dropped one line class.

This is the type of punishment I would expect for possession of drugs, fighting or possession of a weapon not for typing a letter to my Mother.

Please review **EXHIBIT-4**

This is a major case given to another Offender who made the following statements to a female Officer "FUCK YOU BITCH,WHITE TRASH HO,FUCK YOU MUTHAFUCKA".

This Offender was given 30 days recreation restriction.

The facts will show, that I have done nothing to justify my being removed from the Craft Shop.

An if it were not for this Emergence Injunction,I would have never been removed from the Craft Shop and If I got these same cases while in the Craft Shop on the Pack Unit,they would not be grounds to remove me from the Craft shop.

Per policy I must comit a Major rules infract¹ion to be removed from the Craft Shop.

I have only comitted minor infractions that were enha¹nced to major.

Please look at these cases for me and you will agree how unfair they are.

TDCJ DISCIPLINARY REPORT AND HEARING RECORD
CASE: 20180039907 TDCJNO: 00728748 NAME: COLE, KEITH MILD EA: .1
UNIT: BA HSNB: N 0308 JOB: UNASGN MEDICAL IQ: 101
CLSS: 63 CUST: 62 PRIMARY LANGUAGE: ENGLISH LMHA RESTRICTIONS: NONE
GRDE: MI / TA OFF. DATE: 10/10/17 00:25 AM LOCATION: BA GRIEVANCE OFFICE
TYPE: ID

OFFENSE DESCRIPTION

ON THE DATE AND TIME LISTED ABOVE, AND AT BA LAW LIBRARY, OFFENDER: COLE, KEITH MILD, TDCJ-ID NO. 00728748, WAS ORDERED BY V. MAHFOOD TO NOT PLACETITLES NEXT TO HIS NAME IN THE LAW LIBRARY LOG AND SAID OFFENDER FAILED TO OBEY THE ORDER.

CHARGING OFFICER: MAHFOOD, V.

SHIFT/CARD: 11H: capped Off.

OFFENDER NOTIFICATION

IF APPLICABLE INTERPRETER,

TIME/DATE NOTIFIED: 11/9/17 10-17-17 BY: (PRINT) Sgt. K. Thomas
YOU WILL APPEAR BEFORE HEARING OFFICER 24 HOURS OR MORE AFTER RECEIPT OF THIS NOTICE. YOU HAVE THE RIGHT TO SUBMIT A WRITTEN STATEMENT AND MAKE A VERBAL STATEMENT. DO YOU WANT TO ATTEND THE HEARING? YES NO IF NO, HOW DO YOU PLEAD? GUILTY NOT GUILTY

OFFENDER NOTIFICATION SIGNATURE: Offender Declined to sign DATE: 11/9/17
BY SIGNING BELOW, YOU GIVE UP YOUR RIGHT TO 24-HOUR NOTICE AND AUTHORIZE THE HEARING OFFICER TO PROCEED WITH THE HEARING.

Sgt. K. Thomas

OFFENDER WAIVER SIGNATURE: DATE:

HEARING INFORMATION

HEARING DATE: TIME: INTERPRETER SIGNATURE:
EXPLAIN BELOW IF HEARING WAS NOT HELD WITHIN SEVEN DAYS, EXCLUDING WEEKENDS AND HOLIDAYS, FROM THE OFFENSE DATE:

OFFENDER STATEMENT:

OFFENSE CODES: 24.0

OFFENDER PLEA: (G, NG, NONE)

FINDINGS: (G, NG, DS)

PUNISHMENT

LOSS OF PRIV(DAYS) REPRIMAND

*RECREATION(DAYS) EXTRA DUTY(HOURS)

*COMMISSARY(DAYS) CONT. VISIT SUSP THRU / /

*PROPERTY(DAYS) CELL RESTR(DAYS)

* (DAYS)

OFFENDER SIGNATURE FOR RECEIPT OF FINAL REPORT:

HEARING OFFICER (PRINT) WARDEN

2. Under normal, routine circumstances, there is no justification to deny a general population offender additional law library access. The unit Access to Courts Supervisor dictates the times for additional law library access. How much time is adequate will depend on the need of the offender, library habits of the offender, and space availability in the law library.

C. Law Library Log:

1. The I-183, "Daily Law Library Visit Log" (Attachments 030-3 & 030-4) shall record all offender attendance (entering and exiting) in the law library.
2. A staff member shall review each offender's ID card upon entrance into the law library and ensure the information (name, TDCJ#, housing assignment, and time in) entered on the I-183 by the offender is accurate. When the offender leaves the law library, a staff member shall initial the "Comments" section of the I-183 beside each offender's entry to verify all columns have been completed accurately. If a discrepancy in any offender's entry is noted, an employee shall note the nature of the discrepancy beside the appropriate entry and will initiate further action (i.e., disciplinary action), if necessary. The employee that verifies each offender's entry shall print and sign their name at the bottom of each page of the I-183 that they have initialed.

D. Items permitted into the Law Library:

1. All offenders' property brought into the law library will be searched for physical contraband upon entering and leaving the law library. Offenders are prohibited from bringing personal property into the law library unless such property is used for the conduct of legal work.
2. The amount of legal material that an offender shall be allowed to bring into the law library shall be reasonable. Unless otherwise approved by the unit Access to Courts Supervisor, offenders shall only be permitted to bring into the law library approximately four (4) inches of pertinent legal material (i.e., briefs, motions, writing paper, etc.). In addition, an offender may also bring a copy of a legal publication that is not maintained in the law library and a typewriter.
3. Should an offender attempt to gain access to the law library with excess personal property, the offender will be instructed to return the excess property to their cell before being allowed access to the law library.
4. All offenders shall be "pat-searched" upon exiting the law library. An offender will not be strip searched as a condition of entering or exiting the law library, unless there is a reasonable cause to believe that the offender is in possession of contraband.

Exhibit # 4

TDCJ DISCIPLINARY REPORT AND HEARING RECORD

CASE: 20180154832 TDCJNO: 02120475 NAME: FLEMING, MONTY DAVID EA: 5.7
 UNIT: BA HSG: N 007T JOB: JANITOR 5 BLDG 1ST ID: 088
 CLSS: S3 CUST: 62 PRIMARY LANGUAGE: ENGLISH LMHA RESTRICTIONS: LMHA
 BRDE: MA / DB OFF. DATE: 02/08/18 10:15 AM LOCATION: BA BUILDING 5 DORM N
 TYPE: ID

OFFENSE DESCRIPTION

ON THE DATE AND TIME LISTED ABOVE, AND AT BA 5 BLDG D-SPACE, OFFENDER: FLEMING, MONTY DAVID, TDCJ-ID NO. 02120475, MADE THE FOLLOWING STATEMENT: "FUCK YOU BITCH, WHITE TRASH NO, FUCK YOU MUTHAFUCKA" DIRECTED AT OFFICER HOWARD.

CHARGING OFFICER: HOWARD, M. COV

SHIFT/CARD: 1 4

OFFENDER NOTIFICATION IF APPLICABLE INTERPRETER,
 TIME/DATE NOTIFIED: 8:04 2-14-17 BY: (PRINT) T. Manuel CS

YOU WILL APPEAR BEFORE HEARING OFFICER 24 HOURS OR MORE AFTER RECEIPT OF THIS NOTICE. DO YOU WANT TO ATTEND THE HEARING? YES NO IF NO, HOW DO YOU PLEAD? GUILTY NOT GUILTY

OFFENDER NOTIFICATION SIGNATURE: Monty D. Fleming DATE: 2-14-17

BY SIGNING BELOW, YOU GIVE UP YOUR RIGHT TO 24 HOUR NOTICE AND AUTHORIZE THE HEARING OFFICER TO PROCEED WITH THE HEARING.

OFFENDER WAIVER SIGNATURE: Monty D. Fleming DATE: 2-14-17

HEARING INFORMATION

HEARING DATE: 2-14-17 TIME: 9:15 AM UNIT: BA FOLDER: C FILE: 104 DSFILE: 2411ST

COUNSEL SUBSTITUTE AT HEARING: T. Manuel FOLDER: FILE: DSFILE:

EXPLAIN BELOW BY NUMBER: (1) IF COUNSEL SUBSTITUTE WAS NOT PRESENT DURING PART HEARINGS, (2) IF ACCUSED OFFENDER WAS CONFINED IN PRE-HEARING DETENTION MORE THAN 72 HOURS PRIOR TO HEARING, (3) IF ACCUSED WAS EXCLUDED FROM ANY PART OF THE EVIDENCE STAGE, (4) IF ANY WITNESSES OR (5) DOCUMENTATION WAS EXCLUDED FROM HEARING (6) IF OFFENDER WAS DENIED CONFRONTATION AND/OR CROSS-EXAMINATION OF A WITNESS AT THE HEARING (7) IF HEARING WAS NOT HELD WITHIN SEVEN DAYS, EXCLUDING WEEK ENDS AND HOLIDAYS, FROM THE OFFENSE DATE AND, (8) IF INTERPRETER USED: (SIGNATURE)

OFFENDER STATEMENT: I am SST as SLD. I came off N pad I asked

Off. Howard for change clothes. I waited a while but again to get supplies

OFFENSE CODES: she said I will bring 42.0 then in when I get get ready, I said do your job

OFFENDER PLEA: (G, NG, NONE) NG Then she started cursing

FINDINGS: (G, NG, DS) G at me I told her don't

REDUCED TO MINOR (PRIOR TO DOCKET) (DOCKET) (HEARING) BY: (INITIAL) Call me I could back

IF GUILTY, EVIDENCE PRESENTED, CONSIDERED, AND REASON(S) FOR DETERMINATION OF

GUILT: A) ADMISSION OF GUILT, B) OFFICER'S REPORT, C) WITNESS TESTIMONY, D) OTHER.

EXPLAIN IN DETAIL: B) officer report D) no real evidence

PUNISHMENT

LOSS OF PRIV (DAYS) REPRIMAND..... SOLITARY (DAYS).....

* RECREATION (DAYS) 30 EXTRA DUTY (HOURS)..... REMAIN LINE 3.....

* COMMISSARY (DAYS) CONT. VISIT SUSP. THRU / / REDUC. CLASS FROM S3 TO S4

* PROPERTY (DAYS) CELL RESTR (DAYS)..... GOOD TIME LOST (DAYS).....

* OTS (DAYS) SPECIAL CELL RESTR (DAYS)..... DAMAGES/FORFEIT. \$.....

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED:

To punish the offender's behavior

CREDIT FOR PRE-HEARING DETENTION TIME? YES (DAYS) add NO / NA

DATE PLACED IN PRE-HEARING DETENTION: with HEARING LENGTH 9m 36s (MINUTES)

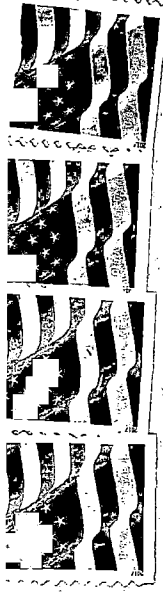
OFFENDER SIGNATURE FOR RECEIPT OF FINAL REPORT: Monty D. Fleming

Matthew Bear

HEARING OFFICER (PRINT) WARDEN REVIEWER SIGNATURE

(FORM I-47MA) CONTACT COUNSEL SUBSTITUTE IF YOU DO NOT UNDERSTAND THIS FORM.

(REV. 04-10) COMUNIQUESE CON SU CONSEJERO SUSTITUTO SI NO ENTIENDE ESTA FORMA



United States Courts
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Case #728748

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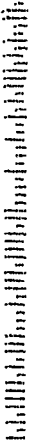
ICE PACK ROAD

TEXAS 77868-4567

U.S. DISTRICT COURT
Clerk of Court

P.O. Box 61010

HOUSTON TEXAS 77208



MR. Keith M Cole #728748
JACK WUIT
PO WALLACE PACK ROAD
WALLASOTA, TEXAS 77868-4567

U.S. DISTRICT COURT
Clerk of Court
PO Box 61010
Houston Texas 77208

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